

## INTERPRETATION OF DOCTRINE OF REPUGNANCY UNDER THE INDIAN CONSTITUTION

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### Abstract

In the realm of legislative federalism in India, the concept of repugnancy under Article 254 of the Indian Constitution has been a confusing one. The debate surrounding the questions of repugnancy confluence two streams of complex judicial interpretations: the first pertaining to the courts determine of how repugnancy between two statutes arises, and the second pertaining to when it arises. These complexities have been ambiguously interpreted by Indian courts over a period of time, and its consequences inevitably dive into the larger question of the courts' role of maintaining a balance between Centre-State legislative relations and preserving the authority of Central and State legislatures in enacting laws.

It is in this light that this article aims to discuss the two interpretative inconsistencies stated above, and discusses the ideal way ahead for the courts to decide on issues of statutory repugnancy under the Indian Constitution. The theme bears a nexus to convoluting concerns of Legislative Federalism converting into excessive centrism or de-centrism, and the expectations of Central and State legislatures on persons to obey contradictory laws. Without identifying simpler determining principles to resolve statutory repugnancy, the object of federal legislative harmony weakens.

**Key words:** Repugnancy, List III, Constitution, Legislative Relations, Federalism

### Introduction

The Constitution of India ('Constitution') installed a unique federal framework in India, where the Centre and States possess a diverse array of powers, where States in India possess plenary powers to legislate on anything within the powers ascribed to them by the Constitution unless and until it is discerned that the Constitution prohibits them to legislate on something expressly, or through necessary limitation inferable within its text (*Maharaj Umeg Singh v. The State of Bombay*). In the same vein, the Parliament (Central Legislature) has the powers to legislate on anything within its competence, and even on subjects not provided under the Constitution (The Constitution, art. 248, *Harbhajan Singh*).

Such division of legislative power originated from the Government of India Act, 1935 ('GOIA'), which divided legislative authority at the Federal and the Provincial levels (*Delhi Laws Act*, para. 321). Under the Constitution, **Schedule VII** lays down three Lists, namely, the Central List, the State List, and the Concurrent List known as List I, List II and List III respectively, which recognise the subject-matters that the Parliament, State Legislatures and both of the legislatures, respectively, are competent to enact laws on (Constitution, sch.VII).

There often arise conflicts between Central and State laws, when they both govern the same set of persons together. Such instances pose questions of: *firstly*, whether the State legislatures were *competent* to enact a law which contravene a Central law; and *secondly*, whether the validly enacted State laws would *continue* to be in force if they conflict alongside the Central law. Article 254 of the Constitution provides the doctrine of repugnancy, which is used by courts to address conflicts between Central and State laws specifically in regards the second question. However, the manner in which this doctrine has been applied is ribbed with a gordian knot, owing to the interpretation of it by Indian courts.

This paper aims to identify, address, and potentially clarify the position of law surrounding the doctrine of repugnancy as laid down under Article 254 of the Constitution. We shall first discuss the doctrine's application under the GOIA, thereafter deconstructing Article 254's text. Thereafter, we shall deal with the development of

the doctrine of repugnancy by Indian courts and consequently identify where they went wrong. The two questions to be discussed in this regard are on determining *how* and *when* repugnancy under Article 254 arises. We shall subsequently trace ideal, and perhaps correct, proposition of law which the courts ought to follow.

### Repugnancy Before the Constitution

Repugnancy is a situation where two laws are inconsistent with each other and cannot be in application together. The doctrine of repugnancy essentially resolves *conflicts* where two laws, governing the same set of persons, or a 'field' of persons, by allowing one law to prevail over the other (*Vishnu Battathiripad v. Pule Poulh*).

This doctrine of repugnancy, in its current form under Article 254, is *mutatis mutandis* to Section 107 of the GOIA. The Federal Court ('FC'), which existed prior to India's independence, had interpreted Section 107 in *Shyamkant Lal v. Rambhajan Singh*. The FC was to determine whether the Bihar Moneylenders Act, 1938, a Provincial law, was repugnant to a proviso of Order 21, Rule 66 of the Civil Procedure Code, 1908, a Federal law. The FC observed that the language of Section 107 only concerns repugnancy between Federal and Provincial laws when they fell under *one of the matters enumerated under the List III* under Schedule VII of the GOIA (*Shyamkant*, para.34). Further, the FC noted that there is always a presumption of the impugned Provincial law's validity and "every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other" to preserve the authority of Federal and Provincial Legislatures (*Shyamkant*, p. 202).

Additionally, the FC held that if upon a conflict between a Provincial law made under List II and a Federal law made under List I, the latter shall prevail by virtue of Section 100 of the GOIA (*Shyamkant*, para.34). Here, a distinction between legislative *competent* and legislative *repugnance* is required. The former pertains to the *powers* of a Legislature to enact laws, whereas the latter pertains to resolution of conflicts between laws post the exercise of these powers (Niranjan, 2017). Under the GOIA, Section 100 conferred powers on the Federal and Provincial legislatures to enact laws, and Section 107 intended to resolve if there arises any conflict between Federal and Provincial laws *made under List III*. Thus, if a Provincial law enacted under List II came in conflict with a Federal law made under List I or List III, then Section 100 would apply and not Section 107. While a conflict between Federal and Provincial laws made under List III would attract Section 107. An analysis of Section 100 is beyond this paper's scope, and this short discussion was merely to distinguish the questions of repugnancy and competency, which may often be subject to confusion (*Megh Raj v. Allah Rakhia*).

The Supreme Court of India ('SC') in *A.S. Krishna v. State of Madras* laid down the test for applying Section 107 of GOIA. In this case, certain sections of the Madras Prohibition Act, 1937 were contended to be repugnant to the Indian Evidence Act, 1882 and the Criminal Procedure Code, 1898. The twin test developed by the SC was: (*Krishna*, para.6)

*"For this section [107] to apply, two conditions must be fulfilled: (1) The provisions of the Provincial law and those of the Central legislation must both be in respect of a matter which is enumerated in the Concurrent List, and (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the provincial law will, to the extent of the repugnancy, become void."* (emphasis added)

Thus, it is evident from section 107 of GOIA, 1935 that *only* when the laws fall within the ambit of List III the question of repugnancy arises and the exact opposite happened in *Krishna*: The Madras Prohibition Act, 1937 was found to be falling under matters enumerated in List II, which led to the SC holding that Section 107 would not apply in the case (*Krishna*, para.16).

Having understood the essence of Section 107's jurisprudence, we shall now deconstruct Article 254's text.

### Deconstructing Article 254's Language

Article 254(1) of the Constitution is as follows:

*“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.*

We see that Article 254 is, like Section 107, concerned with List III where both, the Parliament and the State Legislatures, can enact laws (Niranjan, 2017). However, if there arises a situation where the law enacted by the state legislature is repugnant to a law made by the Parliament, or an ‘existing law’ (meaning a law made before the Constitution’s commencement by the Federal Govt.) (*Khimji Poonja*), then the Union law or ‘existing’ law will prevail. The same is subject to State law gaining the President’s assent in accordance with Article 254(2) (*Kaiser-I-Hind*). Upon repugnancy, the State law shall be void *to the extent of* such its inconsistency with the Central or ‘existing’ law. The words ‘to the extent of’ mean that the State law’s repugnant provision would be void and not the law as a whole (*Shyamakant*, para. 38; *Mahendralal Jaini*, p. 1029).

The phrases ‘one of the matters enumerated’ need to be discussed separately in order to properly decode Article 254(1). Ideally, the phrase ‘one of the matters enumerated in the Concurrent List’ would be read conjunctively with the phrase ‘existing laws’, which would mean that the ‘existing law’ must relate to one of the matters enumerated under List III for a question of repugnancy to arise. However, the SC, and the FC before it, has held that the phrase ‘one of the matters enumerated under’ implies that even for the State and Central laws to be in conflict, they must pertain to List III (*Krishna*; *Hoechst*, para.71; *Kerala State Electricity Board*). There is no contention against this interpretation as, it distinguishes the questions of repugnancy from competency (Jacob, 1968).

Keeping in mind this deconstruction, we shall proceed our analysis of the judicial ambiguities surrounding Article 254.

### **Interpretation of Article 254(1)**

This section may be divided into two parts: firstly, the discussion around the determination of *how* repugnancy arises, and secondly, *when* does repugnancy arise.

### **How Repugnancy Arises**

At the outset, we must thus acknowledge the observation of the SC in *Zaverbhai v. State of Bombay*, wherein the court found a link between the interpretation of Section 107 and Article 254. In this case, there was an apparent conflict between Section 7 of the Essential Supplies (Temporary Powers) Act, 1946, as amended by Act No. LII of 1950, and Section 2 of the Bombay Act No. XXXVI of 1947, as both laid down by different courts which could try an offence provided under Section 5(1) of the Bombay Food Grains (Regulation of Movement and Sale) Order, 1949. The SC noted observed that the underlying objective of Section 107(2) and Article 254(2) was that when both the Central and State laws are enacted to cover a ‘field’ in respect of List III, then the Central law must prevail (*Zaverbhai*, para.12). The SC’s primary, whilst devising their reasoning, was on Article 254(2) as Central law in question here was an *amendment* to the original statute (being an ‘existing law’) made under the GOIA. The SC noted amendment “deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then article 254(2) will have no application” (*Zaverbhai*, para.12). This essentially meant that the amendment must conform to the competence of the original statute. Now, notice how the SC *did not* focus on whether the State and Central laws were in respect of a matter enumerated under List III, and rather observed that they should cover the ‘same field’. This is so because the Bombay High Court (‘HC’), from where the appeal lay, had rejected an argument contending the impugned State law to be falling under List II instead of List III; thereby negating Article 254’s application. Thus, seemingly, the SC went ahead with the *presumption* that the impugned State

law falls under one of the subject matters listed in concurrent list. They concluded that the State law was repugnant and void to the Union law under Article 254 (*Zaverbhai*, paras.15-6).

Soon, the SC in *Tika Ramji v. State of UP* got another opportunity to clarify the position of law under Article 254. The impugned State law, the U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, was contended to be repugnant to the Industries (Development and Regulation) Act, 1951 and the Essential Commodities Act, 1955. The petitioners contended that the impugned law fell under Entry 24, List II and the Central laws under Entry 52, List I, thereby negating the question of repugnancy to have arisen. The respondents pled that the Central and the impugned State laws fell under the matter enumerated in Entry 33 of List III, which talks of laws relating to “foodstuffs, including edible oil and seeds”. The SC accepted the contention of the respondents and proceeded with the question of repugnancy (*Tika Ramji*, para.28). They subsequently found that the impugned State law was not repugnant as it merely had a provision empowering the State government to make rules on sugarcane prices, which *could*, maybe later, be repugnant to the Central law or executive orders made thereunder. Thus, there was no *actual* conflict between the laws.

*Tika Ramji*, for the first time, discussed the possibility of repugnancy arising out of the Central law occupying the whole ‘field’. The SC noted that if the Parliament intended to cover the whole ‘field’ in respect of the subject matters provided under List III, which the impugned State law also covers, Article 254(1) would apply. The underlying reasoning for this is that “if the dominant law has expressly or impliedly evinced its intention to cover the whole field, then a subordinate law in the same field is repugnant and therefore inoperative” (*Tika Ramji*, para.31). In furtherance of the discussion conducted by the SC in *Tika Ramji* and *Zaverbhai*, *Deep Chand v. State of U.P.* substantiated on the principles surrounding statutory repugnancy under Article 254. The SC laid down three tests to determine whether repugnancy arises (*Deep Chand*, para.28; Jain, 2020; Ghosal, 1950):

“(1) Whether there is direct conflict between the two provisions;

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and

(3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field.”

Notice how *none* of the conditions require the State or the Central laws to fall under List III. This clearly deviates from the principles laid down in respect of Section 107 of GOIA in *Krishna*, which required Provincial and Federal laws to fall under List III. However, this position of law was concretised by SC in *M Karunanidhi v. Union of India*, where the Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 and the Prevention of Corruption Act, 1988 and the Criminal Procedure Code, 1973 conflicted. The SC concretely laid down the following principles on repugnancy under Article 254 (*Karunanidhi*, p. 448-9):

“(1) That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

(2) That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

(3) That where the two statutes occupy a particular field, there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

(4) That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.” (emphasis added)

They further noted that “so far as [List III] is concerned, both Parliament and the State legislatures are entitled to legislate in regard to any of the entries appearing therein, but that is subject to the condition laid down by Article 254(1)” (*Karunanidhi*, p.437). This is a development from the omission made in *Deep Chand* as discussed

above. Therefore, the SC held that both, the Central and the State laws in conflict, need to fall under List III. However, the SC in this case *did not* determine whether the Central and State laws fell within List III.

The test in *Karunanidhi* also notes that the Central and State laws must fall within the ‘same field’ which, according to the SC as preconditions on *how* repugnancy arises. This position of law developed over a period of 20 years, but was only to be consequently complexified in *VK Sharma v. State of Karnataka*. In this case, Section 20 of the Karnataka Contract Carriages (Acquisition) Act, 1976 was contended to have become repugnant to the Motor Vehicles Act, 1988, as they both governed carriage contracts. The SC found that the Central law fell under Entry 35, List III and the State law under Entry 42, List III. The SC thus observed that repugnancy could not arise as the laws in question, although falling under List III, pertained to different entries. Therefore, for the SC, they intended to occupy separate ‘fields’, thereby negating the question of repugnancy under Article 254. Even though it was specifically argued from the side of the petitioners that sections 14 and 20 of the State law and Sections 74 and 80(2) of the Central law were in conflict as they both governed carriage contracts and the involvement of regional transport authority, the SC rejected this argument by saying that the “contention proceeds on the footing that the two legislations occupy the same field” (*Sharma*, p.481-2).

The SC seemed to have equated ‘same field’ to mean the ‘same matter’ under List III. Their interpretation thus suggests that repugnancy can only arise when both the laws pertain to the same ‘matter’ under List III, as it is only then when it can be said that the two laws cover the same ‘field’ (*Prem Nath*, para.43; Basu, 1967). The interpretation narrows the very essence of repugnancy which the SC set in its decisions in *Deep Chand* and *Karunanidhi*: that aims to resolve conflicts between laws falling under List III. There may be situations where a law may pertain to two entries within List III (*Ananthakrishnan*) or different entries under two separate Lists (*Bar Council of U.P.*), enviably making way for tangled questions of repugnancy incapable of claspings such a stringent test.

A similar question arose in *Rajiv Sarin v. State of Uttarakhand*, wherein the Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 were contended to be repugnant to the Indian Forests Act, 1927. The respondents contended that the two laws pertained to different entries under List III, thereby negating repugnancy. The SC found that the State law fell under Entry 18, List III read with Entry 42, List III and the Central law fell under Entry 17-A of List III (*Rajiv Sarin*, p.722-3) through the laws’ ‘pith and substance’ (see, *Kartar Singh; Subrahmanyam Chettiar*). Thereafter, they applied the principles enumerated in by them in *Karunanidhi* and concluded that the Central and State law concerned two separate ‘matters’ and did not conflict with one another, thereby proving no repugnancy. (*Rajiv Sarin*, p.725-8). Through the decisions in *Sharma* and *Rajiv Sarin*, the position of law seems to be placing reliance on ‘matters’ enumerated under List III to determine the ‘field’ covered by the impugned laws, consequently helping determine whether repugnancy exists or not.

A distinction between ‘field’ and ‘matter’ is necessary. The SC in *Hoechst* has observed that doctrine of ‘occupied field’ applies “when there is a clash between the Union and the State Lists within an area common to both” (*Sikkim v. Kerala; Hoechst*) The term ‘field’, in Article 254 logic, originated from the jurisprudence endorsed by Indian courts from Canada, England and Australia, where the doctrine of ‘occupied field’ is used to determine whether Provincial and Federal legislatures are repugnant or not (*Adelaide Chemical; Gentel v. Rapps; Clyde v. Cowburn; Attorney General of Ontario v. Attorney General for the Dominion*). Much like the observations in *Tika Ramji*, if a Federal law intends to occupy the whole ‘field’ to govern something, the Provincial laws conflicting would be repugnant to it and void, (*G.P. Stewart v. Brojendra*), since persons cannot be expected to obey two overlapping/diverging laws (Sagar, 2013; Drahozal, 2004).

However, these countries’ Constitutions do not have schedules listing the matters which Central/Federal and State/Provincial legislatures may enact laws on (Jennings, 1953). Therefore, the term ‘field’, as has been borrowed ‘occupied field’, is seemingly broader than the term ‘matter’. Let us take an example to substantiate this stance: Entry 17, List III talks of “prevention of cruelty to animals” and Entry 17-B, List III talks of “protection of wild animals”. The matters are so closely related that Central and State laws prohibiting the ‘slaughter’ of ‘wild animals’ may fall under any of the two categories, since ‘wild animals’ concern Entry 17-B and ‘slaughter’ is certainly a form of ‘cruelty’ under Entry 17 (Chandrachud, 2020). In a situation where the

Central law falls under Entry 17, and the State law under Entry 17-B, whilst their provisions collide, the observations of the SC in *Sharma* and *Rajiv Sarin* will be unable to tackle their conflict. Other examples like Entry 11-A & 46 (organisation of all courts and 'jurisdiction and powers' of courts), Entries 6 & 42 (transfer of property and acquisition and requisitioning of property), and 20 & 23 (judicial proceedings and civil procedure) too exhibit close relationships. In case of such ambiguities, Indian courts may either clarify and distinguish the matters enumerated under List III and accordingly stick to the reasoning in *Sharma* and *Rajiv Sarin*, or hold the concerned laws to fall under more an entry, accordingly expanding the scope of List III 'matters'. The first situation will unnecessarily increase the courts' workload and potentially lead to interpretative ambiguities (Sagar, 2013), while the second possibility might compel courts to expand matters under List III to more than what they tell, consequently, and potentially, eroding the scope of other entries in List III or other Lists. Therefore, it is submitted, the more ideal track would be for the courts to not use the terms 'field' and 'matter' interchangeably and accordingly resort to the former for answering the question of repugnancy. Similar chimes were echoed by J. Nariman in *Innovative Industries v. ICICI Bank (Innoventive Industries)*, p.458-9):

*"49. [...] Therefore, the statement in paragraph 53 in Rajiv Sarin ... may not be a correct statement of the law in view of the unequivocal statement made in Tika Ramji by an earlier Constitution Bench decision. However, the following sentence is of great importance, which is, that the two laws, namely, the Parliamentary and the State legislation, do not need to find their origin in the same entry in List III so long as they deal, either as a whole or in part, with the same subject matter."* (emphasis added)

Central and State laws governing the same set of persons on something is sufficient to prove that they cover the same 'field', irrespective of whether they fall under the same 'matter'. Entries under List III may still be used as a guide to determine whether the Central and State laws fall under List III or not – so as to determine whether the question of repugnancy arises or not. As we have already seen illustrated in cases such as *Karunanidhi*, the SC need not necessarily determine whether the concerned laws fall under the 'same matter' in List III to attract the question of repugnancy under Article 254, and thus may only stick to determining whether they merely fall under List III (*T. Barai; Commissioner of Central Excise*).

### **When Repugnancy Arises**

Ideally, repugnancy under Article arises *when* there is an *irreconcilable* and *actual* conflict between the laws enacted by the State legislature and the Parliament. If such a conflict is found, then the former is void to the extent of its repugnancy with the latter. It was originally pointed out by the FC in *Shyamakant* where it was held that contention alleging repugnancy cannot be a matter of a mere possibility (*Shyamakant*, p. 202).

However, a discordant note chimed in *State of Kerala v. Mar Appraem*. The SC, in this case, was to determine whether the Kerala Chitties Act, 1975 was repugnant to the (Central) Chit Funds Act, 1982. The Central government, interestingly, exempted the Central law's application in the State of Kerala. Yet, the Kerala HC in *Mar Appraem v. Union of India* struck down the State law for being repugnant to the Central law even without the latter applying to Kerala. Thus, the question before the SC was 'whether the mere act of *making* the law results in repugnancy, or does it only occur after its *commencement*?' (*Mar Appraem*, p.117). The petitioners contended that the word 'made' written under Article 254 is relevant only to identify the Central and State laws and "has nothing to do with the point of time for determination of repugnance". Further, "the question as to whether any State Act is repugnant to a Central Act, can be made only after both laws have been brought into force". This meant that the laws need to co-exist with *actual* operation for raising a question of repugnancy (*Mar Appraem*, p.124). The SC, however, observed that the Central Law, made under Entry 7, List III, *intended* to occupy the whole field under the said entry and therefore aimed to regulate Chits. They further noted that the word 'made' under Article 254 "has to be read in the context of law-making process and ... it is clear that to test repugnancy one has to go by the making of law and *not by its commencement*" if a holistic reading of Part XI, Chapter I of the Constitution, which deals with legislative Centre-State relations and distribution of legislative powers, is made (*Mar Appraem*, p.133-40). Thus, as per the SC, if a Central law intends to occupy the whole field under List III, all State law, regardless of *actually* conflicting with it, would be repugnant upon the former being *enacted*. It is submitted that this interpretation is incorrect.

The SC had placed severe reliance on its decisions in *Tika Ramji* and *Karunanidhi*. The two cases did, undoubtedly, note that repugnancy arises where a Central law intends to cover the whole 'field'. Yet, the interpretation in *Mar Appraem* overlooks the condition of there being an *actual* conflict. In fact, *Karunanidhi* clearly noted that if the two laws can co-exist without repugnancy, Article 254(1) would have no application. If the Central law in *Mar Appraem* had not been applied in Kerala, it did not *actually* conflict with the State law. There was thus a possibility of the two laws co-existing until the Central government extended the Central law's application to Kerala and an actual conflict arose.

Further, the interpretation of the term 'made' in Article 254 seems insinuate a centralising tendency, or accumulating law-making powers in the hands of the Parliament. Quite to the contrary, the Constituent Assembly believed that the Centre and the State would work in tangent with one another, garnering the sentiment of cooperative federalism under India's Constitutional framework (*NCT of Delhi*). Dr. Ambedkar, on these lines, had observed the following (Dubey, 2018; Debates, 1949):

"It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other Federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism, as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution." (emphasis added)

The Sarkaria Commission too had noted that several States conveyed their discontent about the centralising tendency of legislative authority in the Parliament's hands when questions of repugnancy arise before courts (Commission, 1983). Therefore, without an inferable intention of the Parliament or the Central government to occupy a field in a State by, for instance, extending the Central law's application therein and begetting its actual conflict with a State's law, a question of repugnancy under Article 254 cannot arise.

Most recently in *West UP Sugar Mills Association v. State of U.P.*, the SC resolved an 'apparent' conflict between its decisions in *Tika Ramji* and *U.P. Cooperative Cane Unions Federations v. West U.P. Sugar Mills Association* ('UPCCUF'). The SC, whilst holding that there was no conflict between the two decisions, threw some important light on the interpretation of Article 254 (*Sugar Mills Assn.*, para.18). Both the State (U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953) and the Central law (Essential Commodities Act, 1955), empower the Central and State governments to decide the price at which sugarcane can be bought and sold. In *UPCCUF*, the SC held that the State government could not fix a price lower than the one fixed by the Centre but could fix a higher price, which would be in conformity with the Sugarcane (Control) Order, 1966 ('1966 Order') made under the Central law (*UPCCUF*, p.467). The State and Central government could thus regulate in the same field alongside one another in the absence of any conflict.

However, before the 1966 Order, the Sugarcane (Control) Order, 1955 ('1955 Order'), was in effect when *Tika Ramji* was decided. The SC, in *Sugar Mills Assn.* noted that "no price was determined and/or fixed by the State" and since no repugnancy arose, the SC in "*Tika Ramji* did not as such enter into the question". Only when the 1955 Order was repealed/replaced by the 1966 Order did the State fix a price different from the one set by the Centre and a question of repugnancy arose (*Sugar Mills Assn.*, para.9).

However, position of law in regards to the question of repugnancy has seemingly changed in *Mar Appraem*, and the SC *Sugar Mills Assn.* did not acknowledge that; perhaps owing to the nature of the question before it. If they did, the decision of *Tika Ramji* would have been found to be in conflict with *Mar Appraem*, since the former held that repugnancy cannot arise in the absence of an actual statutory conflict whereas the latter held otherwise. If the determination in *Sugar Mills Assn.* and *Tika Ramji* considered as correct, then the same is clearly in conflict with the observations in *Mar Appraem*. The position of law is thus hazy.

## **Conclusion and the Way Forward**

Repugnancy under the Constitution dives into far-reaching doubts of the Indian States' prerogative to enact laws on matters enlisted under List III. The Parliament's recurring intention to unify the governance in a certain field, which is regulated inconsistently by different States, makes Article 254's presence in the Constitution undoubtedly pivotal. This perhaps begs for the intrusion of judicial reasoning to burnish it, and not confuse the position of law. Deeming repugnancy to arise only when the Central and State laws fall under the same 'matter' weakens the Central laws' authority to govern the country uniformly due to excessive stringency; whereas deeming repugnancy to arise in the absence of an *actual* conflict between the Central and State laws weakens the State's authority to govern its subjects. Courts, thus, cannot manufacture an interpretation which rusts the doctrine of repugnancy, or erodes Constitutionally prescribed legislative authority of the Parliament and State legislatures.

Therefore, in light of this paper's discussion, the following is recommended:

1. 'Matters' under List III cannot be used to determine the 'field' the concerned laws cover. A 'matter' implies towards an entry in a List, and a 'field' has a broader meaning, and capable of encompassing more than one matter under a Lists. Therefore, Article 254's stringent test must be relaxed and the courts must focus the 'field' rather than the 'matter' to adjudicate on questions of repugnancy.

The decision in *Mar Appraem* is incorrect and overlooks the SC's previous decisions requiring an *actual* conflict to exist between Central and State laws in order to be considered as repugnant under Article 254 to arise. Therefore, the decision therein begs for a formal correction

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